Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	
Capability to All Americans in a Reasonable	)	CC Docket No. 98-146
And Timely Fashion, and Possible Steps	)	
To Accelerate Such Deployment	)	
Pursuant to Section 706 of the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS OF COVAD COMMUNICATIONS COMPANY

Covad Communications Company hereby respectfully submits its reply comments in the above-captioned proceeding. In particular, Covad responds to the troubling suggestion of the Bell Operating Companies, the Progress and Freedom Forum (PFF)[1], and Intel that the Commission ignore the congressional mandate to open incumbent telecommunications networks to competition. The BOCs and their (two) supporters reintroduce an argument that the Commission (and thus far, Congress) have rejected on many occasions: that the 1996 Act intended to introduce competition for voice services, but preserve a monopoly in data services. That the Bell Companies continue to beg the Commission to eliminate competition in order to promote broadband deployment is not surprising. That the Bell Companies have managed to garner two supporters of this argument is disappointing, but is also not surprising.

[1] The PFF counts among its financial backers all four Bell Operating Companies, the BOCs' trade association, USTA, and Intel. See http://www.pff.org/supporters.htm.

Take Rates

As the Commission considers the BOCs' suggestion that the pace of broadband deployment will increase only *after* competition is eliminated, the Commission need only examine the broadband world before the advent of competition. In short, there was no broadband. The BOCs possessed DSL technology, but chose instead to deploy higher-priced services to businesses and to ignore the residential market. This fact is cited often, and for good reason. It demonstrates clearly how monopoly phone companies behave in the absence of competition. The monopoly will not innovate, it will not deploy new technologies, and it will not do *anything* other than fight to preserve its monopoly profits.

The Commission need only then consider today's broadband world – a competitive world. ILECs,[2] CLECs,[3] cable companies[4], satellite providers[5], and even wireless companies[6] are all deploying broadband. Virtually every person in America can order broadband from one of these companies. The capital investment in broadband networks has been – and continues to be – substantial.[7]

In fact, the Commission reported in August – just weeks ago -- how quickly broadband is being deployed. Among other statistics, the Commission noted that the number of high-speed lines connecting homes and businesses grew by 158% in 2000. All methods of broadband transmission – cable, DSL, satellite and wireless – enjoyed substantial subscriber growth. Further, the geographic reach of broadband networks grew in the year 2000. Forty-two percent of the least-populated zip codes reported having

[2] See http://www.pacbell.com/DSL.
[3] See http://www.covad.com/order/online.shtml.
[4] See http://www.adelphia.com/internet/.
[5] See http://www.direcpc.com/index2.html; http://www.starband.com/whatis/index.htm.
[6] See http://www.sprintbroadband.com/about/index.cmss.
[7] The Association for Local Telecommunications Services estimates that CLECs alone will spend $23.5 Billion dollars on capital expenditures this year. See http://www.alts.org/Filings/022001AnnualReport.pdf .

broadband subscribers, up from 24% in 1999. And nearly 100% of the highest-populated zip codes reported broadband subscribers. [8] Far from a "crisis" in broadband deployment that the BOCs misleadingly trumpet, broadband deployment is exploding.

Intel, in its comments, laments that the estimated 9% take rate for residential broadband is unacceptably low.[9] A quick historical comparison reveals that Intel's concern is misplaced. Not only is broadband being rapidly accepted by users, its growth rate is impressive. Indeed, the take rate of residential broadband is much greater than the initial penetration rates of other "new" technologies. As the Commission noted in its first Section 706 report, both the color television and the cellular phone demonstrated slow initial penetration rates upon introduction.[10] The roughly 9% take rate of residential broadband virtually mirrors the take rate of DBS service upon its introduction. After five years, DBS penetration for one provider stood at roughly 10%.[11]

These dynamic new technologies, like broadband, were not instantly accepted by consumers, who needed to be convinced that it was worth their while to purchase something they had never seen before, and didn't know they needed. So too with broadband. Consumers are slowly realizing the benefits of broadband, but haven't yet been convinced in large numbers to adopt the technology. That is an issue for sales and marketing arms of broadband providers, not for regulators. It is clear that the low take rate of broadband does not, by itself, suggest that monopoly is the only way to ensure

[8] "Federal Communications Commission Releases Data on High-Speed Services for Internet Access." 8/9/2001.
[9] Intel Comments at 8.
[10] *Deployment of Advanced Telecommunications Capability to All americans in a Reasosabl and Timely Fashion*, CC Docket No. 98-146, Report, 14 FCC Rcd 2398 (1999).
[11] Bass, Frank M. "DirecTV: A Case History of Forecasting." Accessed at http://www.utdallas.edu/~mzjb/.

broadband availability. As the Commission knows from its pre-1996 experience, there is no broadband in a monopoly environment.[12]

PFF, in its comments, provides the most telling statistics for the speed at which broadband is being deployed. PFF cites a Morgan Stanley Dean Witter study predicting that by 2005 93% of U.S. homes will be passed by cable modem service, and a full 80% will be passed by DSL service.[13] The Morgan study assumes that the current regulatory structure will remain intact – in other words, that BOC demands for regulatory relief will be unsuccessful. If nearly 10 years out from the Act almost every home in America will be able to purchase a broadband service, it is difficult to see what exactly is stifling broadband deployment. Such results predicted by Morgan Stanley are truly remarkable, and a testament to Congress' vision and the Commission's pro-competitive rules.

Further, PFF notes that the tragic events of September 11 demonstrate the need for "redundancy" and "route diversity" in telecom networks.[14] Covad wholeheartedly agrees. Yet if the Commission adopts the proposals of PFF, any chance for network diversity will be squashed, as competitors will be forced from the market. To preserve redundancy and route diversity, the Commission must promote competition.

To the extent that any party believes that the 9% penetration rate is too low, the Commission must consider whether there is a regulatory solution to this "problem." Enticing a customer to buy a product is the responsibility of industry, not the regulator.

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[12] The Commission should also be wary of BOC suggestions that a duopoly in broadband is a desirable result – BOCs and cable providers "splitting" the broadband market. The Commission knows from its early efforts to encourage cellular deployment that duopolies – such as the early cellular duopolies – often prefer to segment the market and avoid competing, in order to keep prices high. In the broadband market, cable companies, which traditionally address the residential market, and the BOCs, which historically prefer to offer high-price, high-margin T-1 services to businesses, would likely segment the market and provide no competitive pressure to one another.

[13] PFF comments at 9, footnote 22.

[14] PFF comments at 20.

Like the rest of the broadband service providers, Covad has a network and is working to sign up customers. As Covad has well documented to the Commission, together with numerous other CLECs, the true obstacle to broadband deployment is the BOCs themselves. The BOC comments in this proceeding are only the latest examples of the BOCs' efforts to undue the market-opening provisions of the 1996 Act, either through legislative changes to the Act (Tauzin-Dingell, e.g.) or regulatory changes. BOC marketplace behavior – denying loops, degrading wholesale service, delaying provisioning – are the clearest examples of their refusal to accept competitive entry, and to do everything in their power to bring an end to competition.

Broadband Speeds

Intel's argument rests on the idea that although some broadband is being deployed, the available bandwidth is not broad enough, and therefore the Commission must grant a de-facto monopoly on the BOCs for DSL services. In fact, Intel's near-term policy goal for broadband deployment is essentially the deployment by all Bell companies of SBC's so-called "Project Pronto."[15] In other words, the type of deployment that Intel seeks is already well underway.

Intel asks the Commission to peg DSL speeds of 6Mbs as the absolute floor of what should be considered acceptable broadband. What Intel fails to note is that the BOCs are deploying the facilities necessary to offer these services *today*, without the supposedly crucial regulatory "relief" that the BOCs seek. Consider SBC's Project Pronto. When SBC announced Project Pronto in 1999, the BOC stated that "as a result of expanded deployment, SBC customers will be able to receive minimum downstream

[15] Intel comments at 6. Project Pronto, announced by SBC in 1999, is a project designed to upgrade SBC's loop plant to support broadband services.

connection speeds of 1.5 megabits per second (Mbps), with more than 60 percent eligible to receive guaranteed speeds of 6.0 Mbps."[16] SBC notes that it is going forward with its Project Pronto. For instance, SBC's 2001 Second Quarter earnings release states that it has deployed "4,000 [remote terminal] locations, nearly double its total of the beginning of the year…DSL service available to 23 million customer locations, or more than 55% of the company's wireline customer locations, up from 14.7 million a year ago…"[17]

BellSouth is also rapidly deploying the type of broadband network that Intel believes can only be deployed with the help of regulatory changes. In a March 2001 analyst briefing, BellSouth noted that it expects to have over 9,000 DSL-capable remote terminals in the ground by the end of the year.[18] Clearly, broadband services capable of delivering 6Mbs are being rapidly deployed. The BOCs are deploying high-speed broadband services at a rapid pace – their calls for the elimination of competition are not only misplaced, they are downright misleading.

Regulatory Parity

The BOCs and their supporters argue that their DSL services are hindered in relation to cable modem service because the cable companies are not required to unbundle essential network facilities. This argument has failed repeatedly before the Commission, and with good reason. While there are a variety of reasons for the different regulatory treatment of the phone companies and cable companies, one fact alone diffuses this argument. Congress directed the FCC to unbundle the local loop. It did not direct the FCC to unbundle the cable plant. In considering whether Congress intended

[16] http://webcast.sbc.com/media/news/release.doc.
[17] http://www.sbc.com/Investor/Financial/Earning_Info/docs/2Q_IB_FINAL_Color.pdf.
[18] March 22, 2001 BellSouth Analyst Meeting. Available at http://investor.bellsouth.com/ireye/ir_site.zhtml?ticker=bls&item_id='pres.htm'&script=11959.

the Commission to dismantle competitive entry in the broadband market, the Commission need only look to the structure of the 1996 Act.[19] Congress directed the Commission to open the bottleneck monopoly incumbent LEC networks to competition. It did not direct Congress to undertake the same measures on the cable network. Indeed, this is the very reason that the BOCs are so heavily invested in their legislative efforts to undo the core market-opening provisions of the 1996 Act – because they recognize that the current state of the law requires just the sort of unbundling that the Commission has put in place.

Unbundling as a Disincentive to BOC Deployment

The unbundling of fiber/remote terminal local loops is not a disincentive to deployment. Covad Communications stands as the sole large, national competitor for DSL services. Covad has in service over 350,000 DSL lines, of which roughly half are residential. Compared to the total number of addressable homes in the DSL marketplace, Covad's market share is a mere fraction. At the same time, as set out in the chart below, the BOCs have – in just two years – increased their own DSL retail deployment from zero to several million. The notion that unbundling is therefore a disincentive to deployment and network upgrades by the BOCs simply will not stand.

Consider how the competitive market will function. The BOC expects to win, and will win, a certain percentage of revenue-generating customers. They will not win all the customers. For those they don't win, some will go to a CLEC. But even where it loses a retail customer, the BOC still wins. More traffic on BOC network means more CLEC wholesale revenue for the BOC. Facilities-based providers like Covad purchase loops, collocation space, and interoffice transport from the BOCs, guaranteeing the incumbents

[19] For example, the Commission correctly concluded in its first 706 inquiry that section 10 of the Act prohibits the Commission from forbearing from section 251(c).

recurring revenue as wholesale providers. There is no "cap on upside return" as Intel would have the Commission believe. It is quite a proposition for the monopoly: deploy broadband facilities and win customers. Even if you do not win all the customers, you still pocket revenue from CLECs and those customers who chose another carrier. It's a clear win-win situation.

Unfortunately, this logic does not hold with the monopolies. Since passage of the 1996 Act, the BOCs have spent an inordinate amount of resources on their Congressional, judicial, and FCC campaigns to kill competition outright. The clear pattern since the Act has been an assault on the Congressionally-mandated goal of competition in local markets, rather than an effort to compete. Given the economic benefits the BOCs derive from competition, their efforts to eliminate it should inform the Commission of the BOCs' true goals. Benefiting consumers has never been – and never will be – part of a monopoly's business plan. That is the economic reality that the Commission should be fighting with every proceeding it undertakes.

Even If…

Should the Commission determine that there is a problem in broadband deployment, it must search for the real reason. And the real reason cannot be that the largest companies are hindered by burdensome regulations. The record shows that the BOCs are not hindered by regulations, but rather got off to a late start once their early efforts to stifle competition were unsuccessful. And once the BOCs did begin to aggressively deploy broadband, they enjoyed tremendous returns. Consider the following chart detailing the growth of BOC and CLEC DSL lines (keeping in mind that the BOCs started from zero only two years ago):

Carrier	Year-end 1998	Year-end 1999	Year-end 2000
Verizon	N/A	N/A	540,000
Bell Atlantic		30,000	N/A
GTE		57,000	N/A
Qwest	N/A	N/A	255,000
USWest		110,000	N/A
SBC		169,000	767,000
BellSouth		20,000	215,000
Covad		57,000	274,000
Northpoint		23,500	110,000
Rhythms		12,500	67,000
Other CLECs		12,000	56,918
Yearly Total	**Roughly 38,000**	**491,000**	**2.3 Million**

Compiled using analyst estimates and industry press releases

It wasn't until 1998 that the BOCs began to invest in broadband facilities, and not until 2000 were aggressive marketing campaigns initiated.

If DSL deployment has slowed, there could be one attributable factor: the widespread failure of some data CLECs. Covad used to compete vigorously with national DSL CLECs Rhythms and Northpoint. Both are no more. Not only are the national players gone, but the regional carriers are failing as well. Jato, HarvardNet, Digital Broadband, and VITTS have all ceased competing for broadband services. The data CLEC market has been decimated by the failure of the BOCs to treat CLECs as valuable wholesale customers.

To preserve competition, and to retain invaluable competitive pressures on broadband deployment, the Commission should not adopt the proposals of the BOCs, Intel, and PFF. It can, however, take concrete steps to further the goals of Congress by acting on the petition to adopt concrete federal rules for UNE provisioning that will allow facilities-based CLECs to continue to offer customers a real choice in broadband services. It has been five years since the Act was passed, and the BOCs still do not provide parity treatment to their CLEC wholesale customers. Adopting real provisioning

rules, and associated self-executing penalties, will give CLECs and consumers the equitable treatment Congress envisioned.

Respectfully submitted,

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